

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 2/2/11
FILE NO. SB 187

JAMES PARK TAYLOR
ATTORNEY AT LAW

January 6, 2011

Governor Brian D. Schweitzer
Office of the Governor
Montana State Capitol Bldg.
P.O. Box 200801
Helena MT 59620-0801

Re: Montana Public Defender Commission

Dear Governor Schweitzer:

It is with regret that I am writing to resign my position on the Montana Public Defender Commission. While I continue to be supportive of indigent defense in Montana, I believe that the Commission as presently constructed is not capable of effectively managing the system. I have been on the Commission since it was created in 2005, serving as the first chair, and have seen the Commission go from a forward thinking, dynamic group that helped to create a national model for a public defender system, to a passive institution that simply accepts whatever information it is presented with.

My perspective is a bit different from that of the other current Commissioners as I have been a private criminal defense attorney, a contract public defender, a full time public defender, and have also had the opportunity to live overseas and observe how other countries have structured their public defender systems. I believe that any government agency should be transparent and accountable and we have not succeeded in this. Decisions are being made based on personalities and individual loyalties, and not on best management practices. In my opinion, the Commission has surrendered control of the system to the Chief Defender, and is operating only as an advisory board that the Chief can heed or ignore as she chooses.

During the year 2008 the Commission began to hear many internal complaints about how the public defender system was running, and because of these persistent complaints, we asked American University to conduct a study of the system. When a report was finally issued in October of 2009, significant problems were identified. The Commission and OPD have made some progress towards the resolving those problems, but many fundamental issues remain.

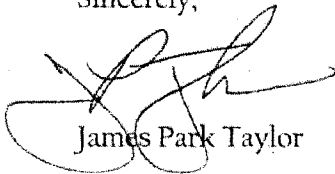
OPD has demonstrated a continued inability to produce accurate and verifiable data about how the system is performing. One of the tasks for the Commission was to produce standards for how attorneys in the system are to handle cases. Although this task has been achieved, OPD has failed to produce any reliable data on whether those standards are being met. I have other concerns as well about the reliability of the information we receive from OPD.

Governor Schweitzer
Page Two

The Commission has failed thus far in its efforts to obtain a reasonable hourly rate of compensation for the contract attorneys that work in the system. The matter has now reached a point that the quality of attorneys we will be able to keep in the system is going to decline because of it. The current hourly rate for contract attorneys has not increased for six years, and is not defensible as a professional rate for skilled attorneys.

There are bright spots in the system; Harry Freebourn has done a remarkable job in his position as Administrative Director, and a statewide system would never have been assembled without him. The staff attorneys, contract attorneys, investigators and administrative staff all work hard under extremely difficult conditions, and do a tremendous job. Chairman Gillespie has put in many hours to try and get the system back on track. I believe, however, that the system will not improve under the current Chief Defender, and the Commission lacks the will to replace her. If I thought that my continued involvement with the system would be productive, I would remain, but as I see no reasonable prospects for change I am resigning. I hope that the problems with the system can be resolved, and I thank you for the opportunity I have had to serve the people of Montana.

Sincerely,



James Park Taylor
Cc: Montana Public Defender Commission
Sen. Dave Wanzelreid
Ann Brodsky
Pat Gervais
Scott Crichton
Legislative Auditor Division